ATTACHMENT OF STOCK CERTIFICATES. — A recent Rhode Island case raises the question whether the certificates of stock in a foreign corporation, that are owned by a non-resident, but bailed to a third party within the state, can be reached by attachment. *Maertens* v. *Scott*, 80 Atl. 369 (R. I.). The court held that as the certificates are not the stock itself and as the stock lies outside the jurisdiction the certificates can neither be attached nor garnished. An analogous question has been presented to the New York [1] and Minnesota [2] courts, differing, however, from the principal case in that the certificates were pledged as collateral security instead of being merely bailed. These courts held that the non-resident debtor's interest could be garnished. To show that all three cases are right and why they are distinguishable requires more than an examination of the various garnishment statutes. It requires an analysis of the very nature of stocks and stock-certificates.

"Stock" has been defined as "the sum of all the rights and duties of a stockholder." [3] On theory, the certificates are the tangible indicia of title to these intangible rights. In fact, they represent the stock to a certain degree. But it is the presence of the duties, as well as the rights, in the stockholder that prevents the certificates from ever completely representing the stock in a way analogous to a bill of lading. Nor are the certificates negotiable instruments, for they are not demands for money.[4] Yet they are, in practice, more than mere title deeds, for the corporation may refuse to transfer the stock upon its books without their surrender.[5] It is this quality that has given them a quasi-negotiable character. Thus the courts have held that they are taxable,[6] subject to larceny,[7] can be administered by an executor in the jurisdiction in which they are found,[8] and that they pass to a *bonâ fide* purchaser free from equities. This last result has been reached by the decision that, by endorsing them with a blank power of attorney, their owner becomes estopped to deny the transfer of the stock they represent.[9] They have accordingly come largely to be used as collateral security for the payment of loans. As to what is the legal effect of such a transfer the courts do not agree. But whether it passes the legal title as in the case of negotiable instruments, or whether it merely passes an equitable interest with a power of sale, secured by an irrevocable power of attorney and the custody of the certificates, it is certain that the pledgee acquires something of value, which, under certain circumstances, he may lawfully sell, and with the proceeds reimburse himself for his loan. The pledgor, of course, has a right to any surplus resulting from this sale. Now the *situs* of this right is with the pledgee [10] and it was against this right that the creditors of the pledgors went in the New York and Minnesota cases. This right, analogous to an equity of redemption in the stock, was cre-

[1] Simpson *v.* Jersey City Contracting Co., 165 N. Y. 193.
[2] Puget Sound National Bank *v.* Mather, 60 Minn. 362.
[3] See LOWELL, TRANSFER OF STOCK, § 4.
[4] See COOK, CORPORATIONS, § 480 *et seq.*
[5] See LOUGH, CORPORATION FINANCE, 65.
[6] See *Re* Whiting, 150 N. Y. 27.
[7] See McAllister *v.* Kuhn, 96 U. S. 87.
[8] Stern *v.* The Queen, [1896] 1 Q. B. 211.
[9] McNeil *v.* Tenth National Bank. 46 N. Y. 325.
[10] 11 HARV. L. REV. 108–112.

ated within the State at the time the loan was made. The presence of the certificates was necessary to make it of value, but they were not the right itself. And so the principal case is clearly sound, for there no rights were created within the state in favor of the non-resident bailor. He still had the legal and equitable title to the stock. The bare certificates were not attachable, for they could not have been sold on execution because the sheriff could not get or give title to the corresponding stock. This basic distinction between a bailment and a pledge of stock has not, however, always been clearly recognized in the cases.[11]

JUSTIFIABLE RELIANCE ON SELLER AS BASIS FOR IMPLIED WARRANTY OF QUALITY. — The law of implied warranty in sales is comparatively modern. In the old cases, if the buyer did not himself require an express warranty of quality, the law implied none.[1] Now, however, it is well settled that in some cases aside from any express stipulations of the parties a seller is held to warrant at least the merchantability of his goods.[2] The basis of this obligation is the justifiable reliance of the buyer upon the seller's superior knowledge and greater judgment in the sale.[3] What will justify the buyer's reliance is essentially a question of fact.[4] In determining this question, all the circumstances of the sale should be considered. But the courts tend to formulate fixed rules to govern given states of fact.[5] Thus some American courts distinguish sharply between sales by a manufacturer, and sales by a dealer,[6] crystallizing into a rule the probability that a manufacturer knows more about his products than a dealer.

The result of the tendency to lay down fixed rules, rather than to view all the facts broadly to determine when a warranty arises by implication, is well illustrated by the cases involving implied warranties of fitness for a particular purpose. That a product is fit for the general purpose of its manufacture is but another way of saying that it is merchantable.[7] But under certain circumstances a warranty will be implied not only that articles are merchantable but that they are fit for a particular purpose.[8] In a recent New York case, the plaintiff, a manufac-

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[11] Winslow *v.* Fletcher, 53 Conn. 390. Based on the interpretation of a local statute, the decision of this case is probably right, but the language of the court is too broad and fails to make the distinction pointed out in this note.

[1] Barr *v.* Gibson, 3 M. & W. 390; Parkinson *v.* Lee, 2 East 314; Gossler *v.* Eagle Sugar Refinery, 103 Mass. 331.

[2] Jones *v.* Just, L. R. 3 Q. B. 197.

[3] See Kellogg Bridge Co. *v.* Hamilton, 110 U. S. 108, 116; Omaha Coal, Coke & Lime Co. *v.* Fay, 37 Neb. 68, 75.

[4] See Preist *v.* Last, [1903] 2 K. B. 148, 154; WILLISTON ON SALES, §§ 231, 236.

[5] Stanford *v.* National Drill & Mfg. Co., 114 Pac. 734 (Okl.); Obenchain & Boyer *v.* Incorporated Town of Roff, 116 Pac. 782 (Okl.). The cases cited are two recent cases which give a decision after a general statement of the law without any discussion of the particular facts involved.

[6] See 16 HARV. L. REV. 590. A number of authorities for and against this distinction are collected in WILLISTON ON SALES, §§ 232, 233.

[7] Professor Williston illustrates this principle by saying that the general purpose of a reaping machine is to reap. But if the machine could not reap, it would not be even merchantable. See WILLISTON ON SALES, § 235.

[8] Kellogg Bridge Co. *v.* Hamilton, *supra*; Bierman *v.* City Mills Co., 151 N. Y. 482.